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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 ANTHONY KIRKNESS,

10 Plaintiff,

11 vs.

12 HONEYWELL INTERNATIONAL, INC.
13 D/B/A HONEYWELL INTELLIGRATED,

14 Defendant.

CASE NO. 3:22-CV-00511-LRH-CLB

15 **STIPULATED PROTECTIVE ORDER**
16 **Regarding**
17 **CONFIDENTIALITY OF DOCUMENTS**
18 **PRODUCED IN LITIGATION**

19 Pursuant to Federal Pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 26(f) and
20 U.S. District Court of Nevada Rule (“Local Rule”) 26-1(e), the parties through their respective counsel,
21 hereby submit the following *Stipulated Protective Order*.

22 **I. RECITALS**

23 WHEREAS: the parties to the above-captioned litigation anticipate that discovery will require
24 the parties to disclose records and information that are confidential and sensitive, including because
25 such records are anticipated to include the parties’ private employment records and private medical
records; and

26 WHEREAS: the parties seek to protect and prevent the improper dissemination of such
27 confidential and private records and information to third parties, during the course of litigation and after
28 the litigation has ended;

29 **II. STIPULATION**

30 THEREFORE: the parties, by and through their respective counsel of record, hereby stipulate
31 and request the Court issue an Order (“*Stipulated Protective Order*”), protecting the confidential nature

1 of certain records and information as may be produced during the course of the above-captioned matter,
 2 as follows:

3 1. If any person or entity, whether or not a party to the instant action, produces or receives
 4 answers to interrogatories, or documents or other things, which the producing or receiving person or
 5 entity considers to be “Confidential Information,” as defined in § II(3)(A)(I) *infra*; or

6 2. If there is deposition testimony which any person or entity, whether or not a party to the
 7 instant action, believes contains “Confidential Information,” as defined in § II(3)(A)(I) *infra*; or

8 3. Third parties produce information which the third parties assert is confidential, the
 9 following procedure shall govern pursuant to Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 26(c)
 10 *et. seq.*:

11 A. Any documents (and the contents thereof), things or information falling within
 12 the definition of “Confidential Information,” set forth in § II(3)(A)(I) *infra*, that are produced may be
 13 designated and marked, in whole or in part, without regard to whether redactions are made,
 14 “Confidential” by the party producing the documents or information, at the time the documents are
 15 delivered to or made available for inspection by any party;

16 I. “Confidential Information” includes, but is not limited to: (a) employment records of any employees or former employees of any party; (b) confidential notes, memoranda, and statements regarding non-party employees; (c) confidential information concerning the discipline and/or termination of non-party employees and former employees; (d) the production of information or documents proprietary to any party, including by way of example and not limitation, tax records and financial statements; (e) other private information of any party or non-party to the present litigation, including consumer records, *e.g.*, phone bills; (f) financial records and business records of any person or entity, whether a party or non-party to the present litigation; and (g) medical records, including medical bills and psychological records, and medical information of any person, whether a party or non-party to the present litigation.

26 B. If a party produces to another party items that contain Confidential Information
 27 as defined above, that party may designate one or more documents, or a portion of a document, as
 28 “Confidential” before producing that document to the other party. Such designation shall be made by

1 marking, stamping or typing the word “Confidential” on each page of the document at the time it is
2 produced to the receiving party’s counsel;

3 C. Any party may designate deposition testimony as “Confidential” by orally
4 making such a designation on the record either at the commencement of the deposition, at the time the
5 testimony is given, and/or before the end of that day’s questioning. Following such a designation, the
6 court reporter shall mark “Confidential” on the transcript or the portion thereof containing the
7 “Confidential” testimony;

8 D. In addition, documents or items produced by one party may be designated
9 “Confidential” by the other party, *i.e.*, the receiving party, by:

10 I. marking the document, in whole or in part, “Confidential” in the same
11 manner as stated above; and

12 II. then forwarding a copy of the marked document back to the producing
13 party;

14 E. In this regard, the receiving party seeking the “Confidential” designation may
15 designate, by number, each document it believes should be “Confidential”;

16 F. If the receiving party has no objection to the “Confidential” designation made by
17 the producing party, the receiving party may either expressly notify the producing party or allow the
18 fourteen (14) calendar-day objection period (set forth below) to lapse. Where there has been no written
19 objection made, once a document or item has been produced and designated as provided herein to the
20 receiving party, the document or item shall be treated as “Confidential,” respectively, pursuant to this
21 *Stipulated Protective Order*, until further order of the Court;

22 4. The following protocol shall apply in the event of an objection to a designation of
23 “Confidential”:

24 A. If there is an objection to the “Confidential” designation, the party so objecting
25 must notify the other party in writing of both the objection and the grounds for the objection (the
26 “Designation Objections”), within fourteen (14) calendar days from the date the designation was made
27 or the document(s)/item(s) received, whichever is later, and the procedure in § II(4)(B) *infra*, shall
28 apply;

1 B. Counsel for the designating party shall have thirty (30) days from receipt of the
2 written Designation Objections to either: (a) agree in writing to de-designate the items pursuant to any
3 and all of the Designation Objections; or (b) file a motion with the Court seeking to uphold any and all
4 designations on items addressed by the Designation Objections (the “Designation Motion”). Pending a
5 resolution of the Designation Motion by the Court, any and all designations of items at issue in such
6 Motion shall remain in place. The designating party shall have the burden on any Designation Motion
7 of establishing the applicability of its designation. If the Designation Objections are neither timely
8 agreed to nor timely addressed in the Designation Motion, then such items shall be de-designated in
9 accordance with the Designation Objection applicable to such items.

10 5. A document or testimony, or portion, summary, or abstract thereof, that is to be treated
11 “Confidential” pursuant to this *Stipulated Protective Order* shall not be disclosed to any persons other
12 than the parties, counsel of record for the parties, attorneys, in-house counsel, legal assistants and
13 clerical personnel employed by them, and other persons to whom disclosure is necessary for the
14 purposes of this litigation. (This allows disclosure to the officers, directors, employees or former
15 employees of the parties, persons requested by counsel for any party to furnish technical or expert
16 service or to give expert testimony with regard to the subject matter of the document(s), item(s) or
17 expert testimony for the trial of this action). However, each such person to whom a party makes such
18 disclosure (other than the parties, counsel, persons directly employed by counsel, Court Personnel and
19 stenographic reporters) shall read this *Stipulated Protective Order* and acknowledge in writing that
20 he/she is fully familiar with the terms hereof and agrees to comply with, and be bound by, this
21 *Stipulated Protective Order* until modified by either further order of the Court or agreement of all the
22 affected parties;

23 6. The inadvertent unintentional disclosure by a party of Confidential information,
24 regardless of whether the information was so designated at the time of disclosure, shall not be deemed a
25 waiver in whole or in part of a party’s claim of confidentiality, either as to the specific information
26 disclosed or as to any other information relating thereto or on the same or related subject matter. The
27 failure to designate any document, material, or information as Confidential in accordance with this
28 *Stipulated Protective Order* at the time it is produced or disclosed does not preclude a party from later

1 seeking to designate a document, material, or information as Confidential. If a party discovers that it
2 inadvertently produced materials containing Confidential information without marking them as such in
3 accordance with this *Stipulated Protective Order*, the party may provide written notice to the receiving
4 party that the materials should be treated as Confidential information in accordance with this *Stipulated*
5 *Protective Order*. Upon receipt of such notice, the receiving party must treat such materials as
6 Confidential information, and upon receipt of materials properly marked as Confidential, must return or
7 destroy the unmarked materials and must reasonably ensure that others to whom the unmarked
8 materials were disclosed have not retained copies. No party shall be deemed to have violated this
9 *Stipulated Protective Order* by failing to maintain the confidentiality of material during a time when
10 that material has not been designated Confidential information, even where the failure to so designate
11 was inadvertent and where the material is subsequently designated Confidential information.

12 7. In accordance with Rule 26(b)(5)(B) of the Federal Rules of Civil Procedure, if
13 information produced in discovery is subject to a claim of privilege or of protection as trial-preparation
14 material, the party making the claim may notify any party that received the information of the claim
15 and the basis for it. After being so notified, the notified party must promptly return, sequester, or
16 destroy the specified information and any copies it has; must not use or disclose the information until
17 the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it
18 before being notified; and may promptly present the information to the court under seal for a
19 determination of the claim. The producing party must preserve the information until the claim is
20 resolved. The inadvertent, unintentional disclosure in this litigation by a party of its own designated
21 privileged document or information, regardless of whether the information was so designated at the
22 time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of privilege,
23 either as to the specific information disclosed or as to any other information relating thereto or on the
24 same or related subject matter. The receiving party upon receiving a privilege log identifying the
25 document remains free to challenge any claim of privilege or protection, but shall not make any claim
26 that the production of the document was a waiver of any privilege or protection. Moreover, absent a
27 ruling that the document or information at issue is not privileged or protected, a receiving party may not
28 disclose or make any use whatsoever of the information disclosed in or derived from the document or

1 information at issue.

2 8. Anyone seeking to file any “Confidential” documents, testimony, or information or any
3 pleadings or memorandum purporting to reproduce or paraphrase all or any portion of such confidential
4 material with this Court must first attempt to make such filings confidentially, by seeking to obtain
5 prior leave of Court for filing the same under seal. Notwithstanding any agreement among the parties,
6 the party seeking to file a paper under seal bears the burden of overcoming the presumption in favor of
7 public access to papers filed in Court. NOTE: If the document is filed electronically, the appropriate
8 protocol for that purpose will be utilized. Any motion regarding filing confidential information and
9 motions to seal shall comply with LR IA 10-5 and the requirements of *Kamakana v. City and County of*
10 *Honolulu*, 447 F.3d 1172 (9th Cir. 2006). *See also, Center for Auto Safety v. Chrysler Group, LLC*, 809
11 F.3d 1092, 1097 (9th Cir. 2016).

12 9. If such application for leave of Court to file any document(s) under seal is denied, then
13 the party who sought leave will be relieved, in that instance only, and only as to such documents for
14 which leave of Court was denied, from complying with this stipulation in relation to that filing;

15 10. Any documents, testimony, and/or information that has been rendered “Confidential”
16 under the parties’ *Stipulated Protective Order* is to be used only in the above-captioned action, and may
17 not be used in any other action or for any other purpose unless the party seeking to make such use has
18 acquired the documents, testimony, and/or information from a source independent of the above-
19 captioned action;

20 11. Within forty-five (45) calendar days of the entry of the final order concluding this
21 judicial proceeding, all “Confidential” documents or things; any copies, summaries, and abstracts
22 thereof; or notes relating thereto, shall be returned to the producing party or destroyed by the receiving
23 party (including by being shredded), at the option of the receiving party, with proof or attestation of
24 such destruction of records being transmitted by the receiving party to the producing party, except as
25 otherwise ordered by the Court or stipulated in writing by the parties. Counsel of record shall obtain
26 return of such information, things, and/or documents from any person to whom that counsel has made
27 available the documents or information produced by the other party designated as “Confidential.”
28 Notwithstanding any other language contained in this *Order*, each party’s counsel of record shall be

1 allowed to retain for its files a copy of all pleadings, motions, exhibits, or other papers filed and/or
2 lodged with the Court, and of all documents designated by both parties or any non-party as
3 "Confidential" and/or summaries or abstracts thereof (including but not limited to documents of any
4 type prepared by a party and/or counsel that are subject to the attorney-client privilege and/or the
5 attorney work-product doctrine). All such documents and information retained by counsel of record
6 must be maintained in a confidential manner and used only in accordance with this *Order*.

7 12. This *Stipulated Protective Order* may be amended, without prior leave of the Court, by
8 the agreement of counsel for the parties in the form of a stipulation and order that shall be filed in this
9 case. Nothing herein shall be construed so as to prevent any party from seeking relief from this *Order*
10 at any time; and

11 13. The parties reserve their rights to assert the confidentiality of documents and
12 information produced irrespective of their production pursuant to this *Stipulated Protective Order*.

13 Dated: March 24, 2023.

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22 Attorneys for Plaintiff Anthony Kirkness

23 Dated: March 24, 2023.

24 OGLETREE, DEAKINS, NASH, SMOAK
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26 Electronic Signature Authorized

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ORDER

The Court only retains jurisdiction over this order while the case is pending. The Court's jurisdiction will cease upon dismissal of the case.

IT IS SO ORDERED.

Dated: March 27, 2023.


UNITED STATES MAGISTRATE JUDGE

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